

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES)

v)

MANNING, Bradley E., PFC
U.S. Army, xxx-xx-(b) (6)

Headquarters and Headquarters Company,
U.S. Army Garrison, Joint Base Myer-
Henderson Hall, Fort Myer, VA 22211

) RULING: GOVERNMENT
MOTION TO REDACT OR
DELETE CLASSIFIED
EVIDENCE FROM EVIDENCE
MADE AVAILABLE TO THE
ACCUSED

) DATED: 8 November 2012

On 26 October 2012, the Government moved the Court pursuant to MRE 505(g)(2) in a classified filing to authorize redactions and deletions from evidence the Government has made available to the Defense and to issue an additional protective order precluding the Defense or its forensic experts from accessing the redacted or deleted information. The Government posits that the redacted or deleted information is not relevant, not favorable, not material to guilt or punishment, and not relevant and necessary for production under RCM 703(f). The Government further proffers that the redacted or deleted information will not be used by the Government during any portion of the trial. The Government intends to limit Defense access to the redacted or deleted information by a software program restricting access by a method called "privileging". The Defense requests that the Court review the proposed redactions and deleted information using the factors the Defense has requested the Court to consider in its previous MRE 505(g) responses. The Court considered those factors in arriving at this ruling.

At issue in this motion is data and metadata. Earlier on 8 November 2012, the Court issued the proposed protective order. The Defense and its forensic experts may review the information and the metadata under the parameters of the protective order. After the review, the Defense may re-raise any issues regarding the metadata with the Court.

With respect to the redacted and deleted information, the Court has examined all of the original and redacted or deleted information and has held two *in camera ex parte* Article 39(a) sessions on 8 November 2012 with the Government in an appropriate place for classified proceedings to address concerns of the Court with respect to that data. The proceedings were recorded. In accordance with the guidance issued by the Court at the second *in camera ex parte* article 39(a) session, the Court finds that the redacted and deleted information is not relevant to this case. The Court further finds that disclosure of this classified irrelevant information risks exposing intelligence activities, sources, and methods and could reasonably cause damage to the national security of the United States.

No information or evidence not disclosed to the Defense by the Government will be used by the Government or by any Government witness during any portion of the trial. This includes rebuttal and rule of completeness.

The redacted and deleted substitution meets the Government's discovery obligations under *Brady* and RCM 701(a)(6) to disclose evidence tending to reasonably negate the guilt of the accused to an offense charged, reduce the degree of guilt to an offense charged, or reduce the punishment.

The irrelevant classified information that was redacted or deleted and not disclosed to the Defense is not material to the preparation of the defense or relevant and necessary for production under RCM 703(f).

The substitution is sufficient for the Defense to adequately prepare for trial and represents an appropriate balance between the right of the Defense to discovery and the protection of specific national security information.

RULING: The classified motion by the Government to voluntarily provide limited disclosure under MRE 505(g)(2) is **GRANTED** in accordance with the guidance of the Court.

So Ordered this 8th day of November 2012.



DENISE R. LIND
COL, JA
Chief Judge, 1st Judicial Circuit